

MICHAEL FAILLACE & ASSOCIATES, P.C.  
Michael Faillace  
Joshua S. Androphy  
60 East 42<sup>nd</sup>. St. Suite 2020  
New York, New York 10165  
(212) 317-1200  
*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
EDUARDO FLORES, HILARINO MEJIA, JOSE  
FLORES, JUAN TAMDRIZ and PEDRO TAMDRIZ  
*individually and on behalf of others similarly situated,*

*Plaintiffs,*

-against-

NYC AUTO SPA LLC., (d/b/a NYC CAR WASH)  
FEE OIL CHANGE CORP., (d/b/a NYC CAR WASH)  
and FLORO PAPANDREA.

*Defendants.*  
-----X

**Civil Action No.  
13-cv-1328 (FB) (RER)**

**RESPONSE TO  
COUNTERCLAIMS**

**FLSA Collective Action  
ECF Case**

Plaintiffs/counterclaim-defendants Eduardo Flores, Hilarino Mejia, and Jose Flores, by  
and through their attorneys, Michael Faillace & Associates, P.C., answer the counterclaims of  
Defendant/counterclaim-plaintiff Floro Papandera, as follows:

1. Paragraph 1 of the Counterclaims sets forth a legal conclusion to which no responsive pleading is required.
2. Counterclaim-defendants admit the allegations set forth in Paragraph 2 of the Counterclaims.

3. Counterclaim-defendants admit the allegations set forth in Paragraph 3 of the Counterclaims.

4. Counterclaim-defendants admit the allegations set forth in Paragraph 4 of the Counterclaims.

5. Counterclaim-defendants lack sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Counterclaims.

6. Counterclaim-defendants lack sufficient knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Counterclaims.

7. Counterclaim-defendants deny the allegations set forth in Paragraph 7 of the Counterclaims.

8. Counterclaim-defendants deny the allegations set forth in Paragraph 8 of the Counterclaims.

9. Counterclaim-defendants deny the allegations set forth in Paragraph 9 of the Counterclaims.

10. Counterclaim-defendants deny the allegations set forth in Paragraph 10 of the Counterclaims.

11. Counterclaim-defendants deny the allegations set forth in Paragraph 11 of the Counterclaims.

12. Counterclaim-defendants deny the allegations set forth in Paragraph 12 of the Counterclaims.

13. Counterclaim-defendants deny the allegations set forth in Paragraph 13 of the Counterclaims.

14. Counterclaim-defendants deny the allegations set forth in Paragraph 14 of the Counterclaims.

15. Counterclaim-defendants deny the allegations set forth in Paragraph 15 of the Counterclaims.

16. Counterclaim-defendants deny the allegations set forth in Paragraph 16 of the Counterclaims.

17. Counterclaim-defendants deny the allegations set forth in Paragraph 17 of the Counterclaims.

18. Counterclaim-defendants deny the allegations set forth in Paragraph 18 of the Counterclaims.

19. Counterclaim-defendants deny the allegations set forth in Paragraph 19 of the Counterclaims.

20. Counterclaim-defendants admit that Papandera lodged criminal charges against one or more of the plaintiffs/counter-defendants, deny that the criminal charges were lodged as a result of the actions alleged in Paragraphs 8-19 of the Counterclaims, and lack sufficient knowledge or information sufficient to form a belief as to the truth of the allegation that the criminal charges were lodged on February 19, 2013.

21. Inasmuch as Paragraph 21 of the Counterclaims repeats and realleges the allegations set forth in Paragraphs 1-20 of the Counterclaims, for their answer to Paragraph 21, counterclaim-defendants repeat, reallege, and incorporate by reference their responses to Paragraphs 1-20.

22. Counterclaim-defendants deny the allegations set forth in Paragraph 22 of the Counterclaims.

23. Counterclaim-defendants deny the allegations set forth in Paragraph 23 of the Counterclaims.

24. Counterclaim-defendants deny the allegations set forth in Paragraph 24 of the Counterclaims.

25. Counterclaim-defendants deny the allegations set forth in Paragraph 25 of the Counterclaims.

26. Counterclaim-defendants deny the allegations set forth in Paragraph 26 of the Counterclaims.

27. Counterclaim-defendants deny the allegations set forth in Paragraph 27 of the Counterclaims.

28. Paragraph 28 of the Counterclaims sets forth legal conclusion to which no responsive pleading is required; to the extent that Paragraph 28 may be deemed to set forth allegation of fact to which a response is required, counterclaim-defendants deny those allegations.

29. Inasmuch as Paragraph 29 of the Counterclaims repeats and realleges the allegations set forth in Paragraphs 1-28 of the Counterclaims, for their answer to Paragraph 29, counterclaim-defendants repeat, reallege, and incorporate by reference their responses to Paragraphs 1-28.

30. Counterclaim-defendants deny the allegations set forth in Paragraph 30 of the Counterclaims.

31. Counterclaim-defendants deny the allegations set forth in Paragraph 31 of the Counterclaims.

32. Counterclaim-defendants deny the allegations set forth in Paragraph 32 of the Counterclaims.

33. Counterclaim-defendants deny the allegations set forth in Paragraph 33 of the Counterclaims.

34. Counterclaim-defendants deny the allegations set forth in Paragraph 34 of the Counterclaims.

35. Paragraph 35 of the Counterclaims sets forth legal conclusion to which no responsive pleading is required; to the extent that Paragraph 35 may be deemed to set forth allegation of fact to which a response is required, counterclaim-defendants deny those allegations.

36. Inasmuch as Paragraph 36 of the Counterclaims repeats and realleges the allegations set forth in Paragraphs 1-35 of the Counterclaims, for their answer to Paragraph 36, counterclaim-defendants repeat, reallege, and incorporate by reference their responses to Paragraphs 1-35.

37. Counterclaim-defendants deny the allegations set forth in Paragraph 37 of the Counterclaims.

38. Counterclaim-defendants deny the allegations set forth in Paragraph 38 of the Counterclaims.

39. Counterclaim-defendants deny the allegations set forth in Paragraph 39 of the Counterclaims.

40. Paragraph 40 of the Counterclaims sets forth legal conclusion to which no responsive pleading is required; to the extent that Paragraph 40 may be deemed to set forth allegation of fact to which a response is required, counterclaim-defendants deny those allegations.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST DEFENSE**

41. The Counterclaims fail to state claims upon which relief can be granted.

##### **SECOND DEFENSE**

42. Counterclaim-plaintiff has not suffered any damages from the conducts alleged in the Counterclaims.

##### **THIRD DEFENSE**

43. To the extent Counterclaim-plaintiff has suffered any damages from the conducts alleged in the Counterclaims, they are offset by the damages Plaintiffs/counterclaim-defendants are entitled to for the causes of action alleged in the Complaint.

##### **FOURTH DEFENSE**

44. The Counterclaims are barred by waiver, estoppel, or laches.

##### **FIFTH DEFENSE**

45. The Court lacks subject matter jurisdiction over the Counterclaims.

##### **SIXTH DEFENSE**

46. The Counterclaims are barred by collateral estoppel.

##### **SEVENTH DEFENSE**

47. Some of the Counterclaims are barred as duplicative of each other.

48. Counterclaim-defendants reserve the right to amend or further please any other defenses applicable to any and all counts after a reasonable opportunity for discovery.

WHEREFORE, the counterclaim-defendants request judgment dismissing the Counterclaims in their entirety, with prejudice, together with costs, disbursements, attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
August 9, 2013

/s/ Joshua S. Androphy

MICHAEL FAILLACE & ASSOCIATES, P.C.

Michael Faillace

Joshua S. Androphy

60 East 42<sup>nd</sup>. St. Suite 2020

New York, New York 10165

(212) 317-1200

*Attorneys for Plaintiffs and Counterclaim-  
Defendants*